

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

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Taylor Farms Retail, Inc.,

Case No. 23-cv-2005 (KMM/DJF)

Plaintiff,

v.

**REPORT AND RECOMMENDATION**

J&J Distributing Co. et al.,

Defendants.

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Plaintiff filed the Complaint in this action on June 29, 2023 (ECF No. 1). Plaintiff was required to serve Defendants within 90 days of filing the Complaint, making the deadline for service September 27, 2023. Fed. R. Civ. P. 4(m). That deadline passed, no proof of service on any Defendant was filed, and no Defendant appeared. The Court issued an Order on September 28, 2023 requiring Plaintiff to serve Defendants and file proof of service within 10 days of the date of the Order, stating that a failure to comply may result in a recommendation of dismissal without prejudice for failure to prosecute as authorized by Fed. R. Civ. P. 4(m) (“September 28 Order”) (ECF No. 6). Ten days from the September 28, 2023 Order passed on Sunday October 8, and October 9 was a holiday, making the deadline for Plaintiff to file proof of service on Defendants October 10, 2023. *See* Fed. R. Civ. P. 6(a)(1). Plaintiff has not filed proof of service on any of the Defendants and has not responded to the Court’s Order in any way. Accordingly, the Court recommends dismissal of this matter without prejudice for failure to prosecute. Fed. R. Civ. P. 4(m) (“If a defendant is not served within 90 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant or order that service be made within a specified time.”)

### **RECOMMENDATION**

Based on the foregoing, and on all of the files, records, and proceedings herein, **IT IS HEREBY RECOMMENDED THAT** this matter be **DISMISSED WITHOUT PREJUDICE** pursuant to Fed. R. Civ. P. 4(m) for failure to prosecute.

Dated: October 12, 2023

s/ Dulce J. Foster

Dulce J. Foster

United States Magistrate Judge

### **NOTICE**

**Filing Objections:** This Report and Recommendation is not an order or judgment of the District Court and is therefore not appealable directly to the Eighth Circuit Court of Appeals.

Under Local Rule 72.2(b)(1), “a party may file and serve specific written objections to a magistrate judge’s proposed finding and recommendations within 14 days after being served a copy” of the Report and Recommendation. A party may respond to those objections within 14 days after being served a copy of the objections. *See* Local Rule 72.2(b)(2). All objections and responses must comply with the word or line limits set forth in Local Rule 72.2(c).